

SUMMARY OF 2009 LOCAL RULES REVISIONS

The Federal Bankruptcy Rules time computation project has been completed and will change the way time periods of less than 30 days are computed in the Federal and Local Rules of Bankruptcy Procedure. This will take effect on December 1, 2009. Due to this change, the Bankruptcy Court will have to make some adjustments to its local rules to be in compliance with the new federal time computation mandates.

The main concept behind the new federal time computation method is the “days are days” approach. This means that there are no more calendar days or business days in the rules. Revised Fed. R. Bankr. P. 9006 states explicitly that this method of computation applies to all local as well as federal bankruptcy rules. All time periods in the federal and local rules are to be computed as calendar days. If the end of a time period falls on a weekend or a holiday, the time period will end on the next business day if counting forward, and on the previous business day if counting backward. All periods of time in the federal rules that are less than 30 days will become time periods that are multiples of 7. For example, a time period of 5 days would become 7 days. 15 days would become 14 days, and so on.

Many of the Bankruptcy Court’s local time periods are currently set forth in business days. This, as stated above, is no longer permissible under the new federal rules. The Court has changed these local time periods to multiples of 7 days. For example, if a party has 7 days under the current local rules to file a reply to Document X, and the party is served with Document X on Friday, the party’s response isn’t due until the next Friday. All days are counted. If the next Friday is a holiday, the party’s response will be due on the following Monday. The party gains three days of response time (the holiday and the weekend). Also, for example, if a party has to file a response to a motion 7 days prior to a hearing scheduled on a Friday, the party’s response is due on the previous Friday before the hearing. Again, all days are counted. If the previous Friday is a holiday, the party’s response will be due on that Thursday. The party will lose a day of response time. This should happen very rarely, however, since it would only happen where the Court is closed on the day of the deadline.

The Local Bankruptcy Rules that are affected are listed below. Some are time periods of 3 or fewer days. In keeping with the new time computation method, the Court has changed these to time periods of hours, e.g., 3 days is now 72 hours. If the deadline falls on Saturday at 3 p.m., for example, the deadline just carries over to Monday at 3 p.m. if counting forward, and carries back to Friday at 3 p.m. if counting backward.

Please note that the Court has made some minor revisions to the Local Bankruptcy Rules that do not have anything to do with time computation. These revisions were made based on feedback and situations that have arisen over the past couple of years. The revisions are summarized below and can be tracked in the comparison version of the local rules.

LRs 1001(B) and (C) - These subsections have been revised to make clear that the latest version of the Rules govern. However, the rules governing plan provisions shall be those in effect when the plan was filed.

LR 1001(E) - This has been revised to make clear that the new method of time computation applies to the local rules (per the federal rules) and also to the Procedures Manual for consistency.

LR 1001(F) - References to the debtor usually refer to both debtors in a joint case, however, not always. The words “unless otherwise indicated” were included to clarify this.

LR 1001(H) - This section was added so that the Clerk of Court would be able to make conforming changes to the local rules if necessary to keep the Local Rules in synch with changes to the Federal Rules of Bankruptcy Procedure. This does not empower the Clerk to make substantive changes or any other changes to the Local Rules.

LRs 1002(B),(C),(D), and (E) - The various deadlines for filing documents to initiate a bankruptcy case were revised to conform with the changes to the federal rules based on the new method of time computation.

LR 1002(D)(4) - The Statistical Summary of Certain Liabilities is not applicable to Chapter 12 cases. This subsection was removed so that there would not be any confusion about this in Chapter 12 cases.

LR 1006(C) - If the debtor is ineligible to pay the filing fee in instalments, the full filing fee must be paid within 5 business days of the denial of the in forma pauperis application. This is a local deadline that would change to 7 days to be consistent with the new time computation method.

LR 1007-2(A) - “Calendar days” was changed to “days” to be consistent with the new time computation method. Also, motions to reinstate a case will need to be filed within 14 days instead of the current 10. This is based on the change in Fed. R. Bankr. P. 9023 that extends the time to seek relief from a judgment or order.

LR 1007-4 - 15 days was changed to 14 to match the change in the federal rules.

LR 1007-5(A) - “Calendar days” was changed to “days” in keeping with the new time computation method.

LR 1007-6(B) - The 15-day deadline for filing the credit counseling certificate was changed to 14 days to match the change in the federal rules.

LR 1007-7(B) - The 15-day deadline for filing schedules and statements of financial affairs was changed to 14 days to match the change in the federal rules.

LR 1009(C)(3) - The debtor must upload an amended matrix within 5 business days of any request from the Court or any other party, or within 5 business days of any conversion of a Ch 11 case. This is a local deadline that would change to 7 days to be consistent with the new time

computation method.

LR 1017-1(D) - The local deadlines of 20 and 10 days to respond to a motion to dismiss a Ch 13 case were changed to 21 and 14 days, respectively, to be consistent with the new time computation method.

LR 1017-2(A) - A debtor will have 14 days after dismissal to seek reinstatement. This is based on the change in Fed. R. Bankr. P. 9023 that extends the time to seek relief from a judgment or order.

LR 1017-3(A) - A debtor will have 14 days after dismissal to seek reinstatement. This is based on the change in Fed. R. Bankr. P. 9023 that extends the time to seek relief from a judgment or order.

LR 1019(A) - The deadlines for filing a matrix (5 days) and schedules and statements of financial affairs (15 days) once a case has been converted have been changed to 7 and 14 days respectively, to be consistent with the new time computation method.

LR 1030 - The local deadline to comply with a request for documents would change from 15 to 14 days to be consistent with the new time computation method.

LR 2002-3 - The Rule regarding the procedure for undeliverable addresses is being separated from LR 2002-2 so that it is clear that this rule applies to all returned notices, and not just notices of the commencement of case and 341 meeting. This Rule is also amended to reflect that debtors have the option of amending the matrix under LR 9060(D) in some circumstances.

LR 2004(C) - A response to a motion to take a 2004 examination must be filed within 5 business days of service of the motion. This local deadline would change to 7 days to be consistent with the new time computation method.

LR 2015-1(A) - Within 5 business days of the appointment of a Ch 12 Trustee, the debtor must tender \$500 to the trustee. This local deadline would become 7 days to be consistent with the new time computation method.

LR 2016-1(A) - The local deadlines for filing supplemental fee disclosure statements, objecting to fee applications, and conducting hearings on fee applications would be revised to be consistent with the new time computation method.

LRs 2016-1(C) and (D) - The time periods in these rules were changed to multiples of 7 so that they would be consistent with the new time computation method.

LR 2016-3(C) - The time period in this rule was changed to a multiple of 7 so that it would be consistent with the new time computation method.

LR 2090(B)(3) - This Rule would be revised to make clear that counsel not admitted to this Court may still attend and fully participate in a 341 meeting.

LR 2091 - This Rule would be revised to draw a distinction between the procedure for withdrawing as counsel where the substituting counsel is with the same law firm and the procedure for withdrawing where substituting counsel (if any) is not with the same law firm.

LR 3001(A) - This Rule would be revised to reflect the fact that the Court no longer has a local Proof of Claim form.

LR 3007(A) and (B) - These local deadlines regarding claim objections would be revised to be consistent with the new time computation method. The 2-day period for continuing or canceling a hearing on a claim objection would be changed from 2 days to 48 hours.

LR 3015-4(J) - The local deadline for serving a Chapter 12 confirmation order would change from 5 to 7 days to be consistent with the new time computation method.

LR 3017(C) - The local deadline for filing an objection to a Ch 11 disclosure statement would change from 5 to 7 days to be consistent with the new time computation method.

LR 3018(A) - A Ch 11 plan proponent must file a ballot summary at least 3 business days prior to the confirmation hearing. This local deadline would change to 72 hours to be consistent with the new time computation method.

LR 3020(A) - An objection to the confirmation of a Ch 11 plan must be filed at least 5 business days prior to the confirmation hearing. This local deadline would become 7 days to be consistent with the new time computation method.

LR 3020(B) - If a confirmation order is not in substantial conformity to Local Form 16, the plan proponent must serve a copy of the proposed confirmation order on certain parties at least 5 business days prior to the confirmation hearing. This local deadline would become 7 days to be consistent with the new time computation method. The local deadline for serving the confirmation order on all creditors and parties in interest would change from 5 days to 72 hours to be consistent with the new time computation method.

LR 4001-1(B) and (D) - Motions for relief from the stay must be set on 20 days notice. Responses to motions for relief from the stay must be filed no later than 5 business days before the hearing. These local deadlines would become 21 and 7 days, respectively, to be consistent with the new time computation method.

LR 4001-1(F) - This Rule would be revised to reflect the recently implemented policy of not requiring the Ch 13 Trustee to give written consent on consent motions for relief from the stay.

LR 4001-2 - These local deadlines regarding requests for continuation of the automatic stay would be revised to multiples of 7 days to be consistent with the new time computation method.

LR 4001-5 - These local deadlines regarding the automatic stay with respect to lessors of real property would be revised to multiples of 7 to be consistent with the new time computation method.

LR 4003-2 - These local deadlines regarding responses and hearings on motions to avoid liens would be revised to multiples of 7 to be consistent with the new time computation method.

LR 4004-1(A), (B), and (C) - These local deadlines for filing certifications of DSO payment and responding to the Court's Bankruptcy Code §1141(d)(5)(C) notice would be revised to multiples of 7. These local deadlines regarding responses and hearings on motions to avoid liens would also be revised to multiples of 7 to be consistent with the new time computation method.

LR 4004-2(A) - This subsection would be revised to clarify that it only applies to post-BAPCPA cases.

LR 4004-3 - This section would be revised to clarify that a motion to reconsider filed while the case is still open is not subject to a reopening fee.

LR 5011(A) - A party filing a motion to withdraw the reference must file the motion within 5 business days of the related pleading or response. This local deadline would become 7 days to be consistent with the new time computation method.

LR 5011(B) - No later than 5 business days after service of the motion to withdraw the reference, any other party may file and serve a response to the motion. This local deadline would become 7 days to be consistent with the new time computation method.

LR 6007 - Objections to the proposed abandonment of assets must be filed within 15 days after the filing of the Trustee's report. This local deadline would become 14 days to be consistent with the new time computation method.

LR 7004(B) - These deadlines relating to service of summons would be revised to 14 days to reflect the changes to the related federal rules.

LR 7016(A) - Parties must deliver copies of exhibits to the Court 3 business days prior to trial. This local deadline would become 72 hours to be consistent with the new time computation method.

LR 7016(B) - Objections to authenticity or genuineness of documents must be made 3 business days prior to trial. This local deadline would become 72 hours to be consistent with the new time computation method.

LR 7026(D) - In all cases in which a trial summons is issued, discovery responses shall be served within 20 days of the service of the related discovery. This local deadline would become 21 days to be consistent with the new time computation method.

LR 7056(E) and (F) - These time periods relating to summary judgment response time would be changed to reflect the changes to Fed. R. Civ. P. 56.

LR 9004(D)(3) - The certificate of service shall be filed within one business day of the underlying document. This local deadline would become 24 hours to be consistent with the new time computation method

LR 9013-1(B) - A response to a motion must be filed at least 5 business days before the hearing on the motion. If the matter is heard on negative notice, the deadline is 20 days after filing. These local deadlines would become 7 and 21 days, respectively, to be consistent with the new time computation method.

LR 9013-1(E) - Any memorandum in support of a motion must be filed no later than 5 business days prior to the hearing on the motion. This local deadline would become 7 days to be consistent with the new time computation method.

LR 9013-2(A) - Because some matters will be heard on 14 days negative notice, and these are not emergency matters, this subsection has been revised to state that an emergency or expedited hearing is one held less than 14 days after the filing of the underlying document.

LR 9013-3(A) and (C) - The Court will typically entertain first day matters within 2 days of filing. This would become 48 hours to be consistent with the new time computation method. Also, the debtor must contact the Courtroom Deputy 2 days prior to the Regular Hearing Date to set the agenda. This would become 48 hours to be consistent with the new time computation method.

LR 9016 - This would be changed to reference the Official Forms since we have eliminated the local subpoena forms.

LR 9019(F) - Local deadlines regarding mediation reports would be changed to multiples of 7 days to be consistent with the new time computation method.

LR 9040(C) - Exhibits must be submitted to requesting parties no later than 3 business days after the request. In the event of an unresolved matter involving the exhibits, the exhibits must be submitted to opposing counsel no later than 3 business days prior to the hearing. These local deadlines would become 72 hours to be consistent with the new time computation method.

LR 9050(A) - In the event that an agreement cannot be reached regarding a proposed order, opposing counsel shall have 3 business days to submit a competing order. This local deadline

would be changed to 72 hours from the time the proposed order is faxed or e-mailed to opposing counsel to be consistent with the new time computation method.

LR 9050(B) - This subsection would be revised to prohibit “retention of jurisdiction” language in proposed orders.

LR 9050(D) - All orders in Ch 11 cases must contain the following statement:

No later than 5 business days after the date of this order, _____ (name of party) is directed to serve a copy of the order on all parties listed below and is directed file a certificate of service no later than 2 business days after service.

These local deadlines would become 7 days and 24 hours, respectively, to be consistent with the new time computation method. The 24 hours to file a certificate of service is consistent with the time for filing a certificate of service set forth in LR 9004.

LR 9061 - The local negative notice deadlines would be changed to multiples of 7 days to be consistent with the new time computation method.

LR 9070 - An attorney or party wishing to participate in a hearing by telephone or video conference must contact the Courtroom Deputy 5 business days before the hearing. This local deadline would become 7 days (or as soon as possible if the hearing is scheduled earlier than 7 days after the underlying pleading is filed) to be consistent with the new time computation method.